



State of New Jersey
Council on Affordable Housing

101 SOUTH BROAD STREET
PO Box 813

TRENTON NJ 08625-0813

(609) 292-3000
(609) 633-6056 (FAX)

JON S. CORZINE
Governor

JOSEPH V. DORIA JR.
Commissioner
LUCY VANDENBERG
Executive Director

December 17, 2008

Re: Application of COAH Scarce Resource Restraint to Highlands Municipalities

To All Concerned:

Please accept this letter on behalf of the New Jersey Council on Affordable Housing ("COAH" or the "Council") concerning development within Highlands municipalities under the provisions of COAH's scarce resource restraint. As you are aware, on November 12, 2008, the Council adopted a resolution placing a scarce resource restraint upon all municipalities in the Highlands Region. The scarce resource restraint states in pertinent part,

BE IT FURTHER RESOLVED, that the scope of this scarce resource restraint shall apply to any and all municipal actions associated with development approvals, water allocation and wastewater allocation but shall not apply to single-family or duplex units on existing lots, any residential development that includes at least a 20 percent set-aside on-site for affordable housing or any activity that is formally determined to be exempt from the Highlands Act or is formally granted a waiver under the Highlands Act or the RMP[Regional Master Plan]...

The restraint applies in all Highlands municipalities under COAH's jurisdiction. It applies to residential and non-residential development in both the Planning Area and the Preservation area of the Highlands.¹

Consistent with N.J.S.A. 40:55D-21 and 22 of the Municipal Land Use Law ("MLUL"), a municipality may review development applications and determine whether the application is complete without the project first receiving a waiver of the scarce resource restraint from COAH. Further, the municipality may also determine whether the application meets its requirements for approval. If the project meets the requirements for approval, pursuant to N.J.S.A. 40:55D-22 the municipality may issue an approval of the development application, "conditioned on removal of

¹ Washington Township, Morris County and White Township, Warren County are not subject to the scarce resource restraint as they have already received third round substantive certification.

such legal barrier to development." As applied to COAH's scarce resource restraint, the removal of COAH's scarce resource restraint or the Council's grant of a waiver of the scarce resource restraint to a particular property and development would be a required condition of any development approval granted by a municipality.

In addition, COAH recommends that before proceeding with the submission of a plan by a developer and the review of same by a Highlands municipality, both parties may wish to consult with one another in order to preliminarily determine if the project would meet with COAH's approval under the scarce resource restraint. For example, the parties may wish to determine whether a particular property could be used as a potential affordable housing site to meet a municipality's obligation.

Applicants seeking a waiver of COAH's scarce resource restraint should follow COAH's waiver process set forth at N.J.A.C. 5:96- 15. Waivers should be submitted to COAH in the form of a motion pursuant to N.J.A.C. 5:96- 13, and should be submitted to the entire COAH service list. Any application covered in the list below does not need to obtain a waiver from the scarce resource restraint, and its municipal approval does not have to be conditioned upon the receipt of a waiver from COAH:

Exemptions to the Highlands Scarce Resource Restraint:

1. Projects consisting of a 20% (or greater) affordable housing setaside;
2. Construction of single or two family homes on existing lots;
3. Issuance of a building permit where the project has already received all necessary permits and approvals at the municipal and state level as of November 12, 2008, or where a project has received municipal approvals and does not require state permits;
4. Projects that have been formally granted a waiver under the Highlands Act or the RMP;
5. Projects that have been formally deemed exempt by the Highlands Council or NJDEP;
6. Reconstruction of buildings within 125% of the footprint that existed as of November 12, 2008;
7. Improvements to single or two-family homes in existence as of November 12, 2008, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system;
8. Improvements to non-residential structures used as a place of worship, school or hospital in existence as of November 12, 2008, including but not limited to new structures, an addition to an existing building or structure, or a sanitary facility;
9. Woodland and Forest management plans: An activity conducted in accordance with an approved woodland management plan; or an approved wetland mitigation bank;
10. Construction or extension of trails with non-impervious surfaces on publically owned lands or on privately owned lands where there is a conservation or recreational use easement;

11. Repair of transportation or infrastructure systems, including the routine maintenance and operation, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State or local government entity provided the activity is consistent with the goals of the Highlands Act;
12. Transportation safety projects, including bicycle and pedestrian facilities by a State or local government entity provided the activity is consistent with the goals of the Highlands Act;
13. Public utility lines, rights of way or systems, including the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights of way or systems by a public utility, provided the activity is consistent with the goals and purposes of the Highlands Act;
14. Reactivation of rail lines and rail beds existing as of November 12, 2008;
15. Construction of a public infrastructure project prior to November 12, 2008 or a capital improvement project approved by public referendum prior to November 12, 2008;
16. Mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring on a site existing on November 12, 2008;
17. Remediation of any contaminated site pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.);
18. Any lands of a federal military installation existing as of November 12, 2008;
19. Cell phone antennae on existing structures;
20. Non-residential development applications seeking to re-occupy existing non-residential spaces;
21. Issuance of a certificate of occupancy for a preexisting structure;
22. Extensions of any prior approvals, where there is no change in the terms of the approval, or where the change is covered by the exemptions listed here;
23. Changes of occupancy;
24. Interior or exterior renovations;
25. Demolition of non residential structures;
26. Requests for interpretations;
27. Permits for signage;
28. Applications for site improvements that are not related to new construction or development, including retaining walls, HVAC work and handicapped access;
29. Appeals of decisions by the Administrative Officer;
30. Applications for subdivisions not related to new construction or development (e.g., lot line adjustments, consolidations);
31. Applications for development required by an Order of the Fire Marshal, Construction Official, or Code Enforcement Officer to address conditions cited pursuant to the Uniform Fire Code, the Uniform Construction Code, or the adopted Property

Maintenance Code, or other standards, for remediation of conditions affecting public health, public or occupant safety, structural safety, or accessibility hazards;

32. Construction of accessory structures only;
33. Lot line adjustments where no new building envelope is created;
34. Development proposals that involve properties less than 0.10 acres in area;
35. Subdivisions necessary to settle the estate of a decedent;
36. Applications to the Zoning Board of Adjustment for 'a' and 'b' variances under N.J.S.A. 40:55D-70.

Applications to the Zoning Board of Adjustment for 'c' and 'd' variances under N.J.S.A. 40:55D-70 shall be reviewed by the Executive Director of COAH who shall determine whether the application needs to be processed as a waiver.

If you have any questions, please do not hesitate to contact Gina Fischetti at (609) 633-6186.

Sincerely,

A handwritten signature in black ink that reads "Lucy L Vandenberg". The signature is written in a cursive, flowing style.

Lucy Vandenberg, PP, AICP
Executive Director